



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

09/657,041

09/05/2000

Leonard Pinchuk

93-P0241US08[209.1580001]

9622

54953

7590

10/13/2010

BROOKS, CAMERON & HUEBSCH, PLLC

1221 NICOLLET AVENUE

SUITE 500

MINNEAPOLIS, MN 55403

EXAMINER

SEVERSON, RYAN J

ART UNIT

PAPER NUMBER

3731

MAIL DATE

DELIVERY MODE

10/13/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/657,041	Applicant(s) PINCHUK ET AL.	
	Examiner RYAN J. SEVERSON	Art Unit 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 September 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30, 40, 42 and 59 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-30 is/are allowed.
- 6) ☒ Claim(s) 40 and 42 is/are rejected.
- 7) ☒ Claim(s) 59 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn. More particularly, the finality is withdrawn because it has been shown that the prior reference to Kitagawa et al. (JP 64-32857) did not make clear that the leg portions of the liner contact and are connected to one another along their entire lengths.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. **Claim 40 is rejected under 35 U.S.C. 102(e) as being anticipated by Marcade (5,683,449).** Regarding the use of Marcade as prior art, applicant is reminded that the claims of the present application have been afforded an effective filing date of 11/13/1995 (see page 3 of the non-final rejection mailed 12/8/2008 for detailed explanation). Therefore, Marcade qualifies as prior art because it has a filing date of 2/24/1995.

Art Unit: 3731

4. Marcade discloses a multi-component bifurcating expandable supportive endoluminal graft (see figures 2, 7 and 8) comprising a plurality of expandable supportive components adapted to be individually deployed in a body vessel. One of the supportive components (see figure 8) is a trunk component (the stent) and a trunk liner. Although figure 8 shows the trunk component inside the liner instead of outside, Examiner directs applicants attention to column 12, lines 3-5 where Marcade makes clear the trunk component (stent) can be disposed on the exterior of the liner as claimed. The trunk liner has a generally cylindrical body portion (754) and two leg portions (760, 762) with each leg portion defining a leg opening. The leg portions abut one another and are secured to one another along their entire length (due to stitch line 758). At least one other of the expandable supportive components is a generally cylindrical supportive leg component (114 or 116) disposed within the leg portions of the liner (see column 21, lines 33-35 and 39-41). The support leg components are telescopically slidable within the leg portions of the liner and are not connected thereto.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3731

6. **Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marcade (5,683,449).** Marcade discloses the invention substantially as described above, but fails to disclose the supportive components are self-expanding. However, making stent components self-expanding is a well-known art-recognized alternative equivalent to making stent components balloon expandable. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the stent components of Marcade self-expanding instead of balloon expanding, as is well-known in the art. Since applicant failed to traverse examiner's assertion, the common knowledge or well-known in the art statement is taken to be admitted prior art (MPEP 2144.03 C).

Allowable Subject Matter

7. Claims 1-30 are allowed.

8. Claim 59 is objected to as being dependent upon a rejected base claim. Examiner notes that claim 59 defines over the prior art, but can not be rewritten in independent form because this reissue application would then no longer be correcting an identified error (more detailed explanation for this situation can be found in the Non-Final Rejection of 3/15/2010) and would not be allowed under 35 USC 251.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to RYAN J. SEVERSON whose telephone number is (571)272-3142. The examiner can normally be reached on Monday - Friday 8:30-5:00.

10. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ryan J Severson/
Examiner, Art Unit 3731
10/12/10